

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Office of the Secretary
Office of Aging and Adult Services

Home and Community Based Services Waivers
Adult Day Health Care

(LAC 50:XXI.2101, 2103, 2107, 2109, 2313, 2317 and Chapter 27)

The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services proposes to amend LAC 50:XXI.2101, 2103, 2107, 2109, 2313 and Chapter 27, and to adopt §2317 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing home and community-based waiver services for adult day health care (*Louisiana Register*, Volume 30, Number 9). The Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amended the provisions governing the Adult Day Health Care (ADHC) Waiver Request for Services Registry to: 1) clarify procedures for the allocation of ADHC waiver opportunities; 2) amend the provisions governing the medical certification process to remove preadmission screening and

annual resident review requirements; and 3) eliminate the use of the Title XIX Medical-Social Information Form (Form 90-L) (*Louisiana Register*, Volume 32, Number 12). The Department promulgated an Emergency Rule to amend the September 20, 2004 Rule to: 1) redefine the target population; 2) establish provisions governing placement on the request for services registry; 3) clarify the comprehensive plan of care requirements; and 4) establish provider reporting requirements and admission and discharge criteria for the ADHC Waiver (*Louisiana Register*, Volume 33, Number 3). The Department now proposes to amend the September 20, 2004 Rule to more precisely define the target population, establish explicit provisions governing placement on the request for services registry and admission and discharge criteria for the ADHC Waiver.

This action is being taken to avoid federal sanctions which may result from not having provisions to clearly define the ADHC target population and admission and discharge criteria. It is anticipated that implementation of this Emergency Rule will not have a fiscal impact in the Medicaid Program for state fiscal year 2006-2007.

Effective May 20, 2007, the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services amends the provisions of the September 20, 2004 Rule governing the Adult Day Health Care Waiver program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community Based Services Waivers Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2101. Introduction

A. These standards for participation specify the requirements of the Adult Day Health Care (ADHC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2103. Program Description

A. An Adult Day Health Care (ADHC) Waiver program provides direct care for five or more hours in a 24-hour weekday to individuals who are physically and/or mentally impaired.

B. The target population for the ADHC Waiver Program is individuals who meet Medicaid financial eligibility requirements and nursing facility level of care requirements, and who are either receiving Medicaid-funded services in a nursing facility or at imminent risk of nursing facility placement.

1. A person is considered to be at imminent risk of nursing facility placement when he:

a. is likely to require admission to a nursing facility within the next 120 days;

b. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided in within 120 days; or

c. has a primary caregiver who has a disability or is over the age of 70.

2. These individuals must be 65 years old or older, or 22 to 64 years old and disabled according to Medicaid standards or the Social Security Administration's disability criteria.

C. This program expands the array of services available to functionally-impaired individuals and helps bridge the gap between independence and institutional care, allowing them to remain in their own homes and communities. Repealed. Repealed.

D. Goals

1. Adult Day Health Care programs work to:

- a. promote the individual's maximum level of independence;
- b. maintain the individual's present level of functioning as long as possible, preventing or delaying further deterioration;
- c. restore and rehabilitate the individual to the highest possible level of functioning;
- d. provide support and education for families and other caregivers;
- e. foster socialization and peer interaction; and
- f. serve as an integral part of the community services network and the long-term care continuum of services.

2. The long-range goal for all adult day health care participants is the delay or prevention of 24-hour care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

\$2107. Request for Services Registry

A. The Department of Health and Hospitals is responsible for the Request for Services Registry, hereafter referred to as

"the registry", for the Adult Day Health Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number which shall be maintained by the Department.

B. Individuals who desire their name to be placed on the ADHC Waiver registry shall be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement. Only individuals who meet these criteria will be added to the registry.

C. Individuals currently on the ADHC Waiver registry will be screened to determine whether they meet nursing facility level of care and are at imminent risk of nursing facility placement.

Repealed.

D. An individual who does not meet the criteria for placement on the registry may appeal the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2035 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2256 (December 2006), LR 33:

\$2109. Programmatic Allocation of Waiver Opportunities

A. When funding is appropriated for a new ADHC Waiver opportunity or an existing opportunity is vacated, the Department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. That individual shall be evaluated for a possible ADHC Waiver opportunity assignment.

B. Adult Day Health Care Waiver opportunities shall be offered based upon the date of first request for services, with priority given to individuals who are in nursing facilities but could return to their home if ADHC Waiver services are provided. Priority shall also be given to those individuals who are at imminent risk of nursing facility placement.

1. Remaining waiver opportunities, if any, shall be offered on a first-come, first-serve basis to individuals who qualify for nursing facility level of care, but who are not at imminent risk of nursing facility placement.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Chapter 23. Provider Participation

§2313. Comprehensive Plan of Care (CPOC)

A. ...

B. Reimbursement shall not be made for ADHC Waiver services provided prior to the Department's approval of the CPOC.

Comprehensive plans of care must be completed and submitted timely in accordance with DHH policy and procedures.

C. The ADHC provider shall complete a CPOC which shall contain the type and number of services, including waiver and all other services, necessary to maintain the waiver recipient safely in the community.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2317. Reporting Requirements

A. ADHC facilities are obligated to report changes to the Department that could affect the waiver recipient's eligibility

including, but not limited to, those changes cited in the denial or discharge criteria.

B. ADHC facilities are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the recipient and completing an incident report. The incident report shall be submitted to the Department with the specified requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Chapter 27. Admission and Discharge Criteria

'2701. Admission Criteria

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;
2. initial and continued eligibility for a nursing facility level of care;
3. justification, as documented in the approved CPOC, that the ADHC Waiver services are appropriate, cost-effective and represent the least restrictive environment for the individual;

4. assurance that the health, safety and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services; and

5. the individual is either in a nursing facility or is at imminent risk of nursing facility placement.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in §2701.A. above will result in denial of admission to the ADHC Waiver.

C. - G. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

§2703. Discharge Criteria

A. The recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined:

1. The individual does not meet the criteria for Medicaid financial eligibility.

2. The individual does not meet the criteria for a nursing facility level of care.

3. The recipient resides in another state or has a change of residence to another state.

4. The individual is admitted to an acute care hospital, rehabilitation hospital or a nursing facility with the intent to stay, or a stay that is longer than 90 consecutive days.

5. Continuity of services is interrupted as a result of the recipient not receiving and/or refusing ADHC Waiver services during a period of 30 consecutive days.

6. The health, safety and welfare of the individual cannot be assured through the provision of ADHC Waiver services.

7. The individual fails to cooperate in the eligibility determination process or in the performance of the CPOC.

8. It is not cost effective to serve the individual in the ADHC Waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and pursuant to Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 33:

Implementation of the provisions of this Rule shall be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, Louisiana 70821-2031. He is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.

Secretary